United Nations A/HRC/29/37/Add.6

General Assembly

Distr.: General
27 May 2015

English only

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns

Addendum

Mission to the Gambia: comments by the State on the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*

* Reproduced as received.

GE.15-10575 (E)
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Mission to the Gambia: comments of the Government of the Gambia on the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

The following document represents the views and comments of the Government of the Gambia in respect of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, drafted following a country visit to the Gambia from 3 to 7 November 2014.

I. Introduction

1. The Gambia is dismayed at the bias manner in which the Special Rapporteur has presented its Report. The allegations contained therein are unsubstantiated and lack merit, with a heavy reliance on tabloids as a source of information. The Report fails to highlight the positive effort and achievements of The Gambia in the field of Human rights.

2. Given the bias and speculative nature of the Report, the Report is an inaccurate representation of the situation on the ground. We note that the Report of the Special Rapporteur is based substantially on information generated by other bodies such as Amnesty International and tabloid Reports whose publications about The Gambia remain unverified.

3. The fact that the Special Rapporteur based most of his allegations on inferences, speculations and unverified information are particularly worrying especially when the Special Rapporteur did not confirm the veracity of these allegations with The Gambian Government Officials.

4. In Paragraph 2 of the Report, the Special Rapporteur states that during the visit, they met with certain Government officials including the Deputy Minister of Health. This is incorrect as no such designation exists in The Gambia.

II. General background

5. Paragraph 10 of the Report states "... despite legal provisions for Court Marshall Proceedings to be public, they have reportedly started in closed chambers and it is unclear whether the accused have adequate legal representation..." This statement is factually incorrect and has no basis in reality. The proceedings did not take place in closed chambers. The provisions of section 24 of the Constitution of The Gambia and section 109 of the Armed forces Act were observed at all times during the trial of the accused. On the issue of legal representation, all accused were legally represented by private practitioners paid for by the National Agency for Legal Aid (NALA). The rights of the accused to legal representation has not been breached in anyway. Their family members were present during the trial and they were allowed access to their families. Given the nature of the proceedings which borders on national security, the press were excluded for obvious reasons.

III. Death penalty

6. In Paragraph 20, we agree with the Special Rapporteur that Article 18(2) of the constitution of The Gambia is in line with international standards, we disagree however that the "reality however, is different".

7. Paragraph 21 is not an accurate representation of The Gambian law. The Special Rapporteur fails to highlight that even though the death penalty exists with regards to offences under the Armed forces Act, particularly sections 26 to 39, 41 and 45, the sentence of death is however not mandatory. The Court Martial has discretion to impose the death sentence or life imprisonment or any less punishment provided by the Act. Save for the offences under section 188 and 35(f) of the Criminal Code which carries a mandatory death sentence, Gambian law clearly empowers the court, in appropriate circumstances, to impose the death penalty as it is in force, having being restored in 1995. It therefore follows that the law is in line with international standards and its interpretation has also conformed to international standards.

8. In view of the above and fact that the Supreme Court of the Gambia has interpreted Section 18(2) of the Constitution in line with international standards, the Special Rapporteur has no basis for concluding that the " reality on the ground is however different".

9. In paragraph 11 the Special Rapporteur notes "...interference with the independence of the judiciary... Human rights protection is largely an illusion". However in Paragraph 22, the Special Rapporteur acknowledges the decision of the Supreme Court of The Gambia in Badjie v. The State, "The Special Rapporteur is pleased to learn...the supreme court unanimously agreed and commuted the death sentences to life imprisonment". Contrary to the allegation made in paragraph 11, Paragraph 22 is a clear manifestation of the independence of The Gambia's judiciary, free from executive control or influence.

10. Paragraph 24, "the Special Rapporteur received Reports about the inadequate conditions of detention of death row prisoners...The fact that the permission that he was granted to visit this establishment and to investigate these allegations was cancelled at the last minute, seem to support the contention that the State believes it has to hide the conditions from international scrutiny." Again, this is speculative and not supported by any evidence. The condition of detention and treatment of persons on death row in The Gambia are fair and meets international standards. Lawyers and family members have unhindered access to death row inmates. The fact that the Special Rapporteur did not have access to the security wing cannot in itself justify the conclusion that "The Gambia has something to hide", besides which country will open its maximum security wing to the public?

IV. Resumption of execution and conditional moratorium

11. Paragraphs 25- 34 are merely speculative and their veracity has not been verified. All trials resulting in the imposition of the death penalty were carried out according to due process and fair trial standards.

12. Contrary to the allegation contained in paragraph 27, all nine death row inmates who were executed in August 2012 had already exhausted their appeals. The executions were conducted in accordance with Gambian law and were not arbitrary.

13. Paragraph 30 is inaccurate, no inmate with a mental condition was executed in August 2012 and there are no inmates at the Mile II Central Prisons with mental disorders.

14. Paragraph 33 is incorrect and does not represent the information given to the Special Rapporteur. The Gambian Officials informed the Special Rapporteur that according to the

Prisons Act, the Committee conducts a visit on the Prisons Quarterly. However, Members of the said committee can visit the prisons at any given time. On the composition of the Committee, it comprises Government Officials, Retired Civil Servants and Private Individuals.

V. Use of force by law enforcement and activities of paramilitary groups

15. Paragraph 36 is factually incorrect. The Gambia has not recorded any "deaths in custody" by the agents of the NDEA. In the case of Cherno Alieu Suwareh, we state categorically that Mr. Suwareh's death did not occur whilst he was in the custody of the NDEA. Those accused of his death were all investigated and prosecuted in accordance with the law. A court of competent jurisdiction acquitted and discharged them in view of the evidence before it and nothing else.

16. Contrary to the allegations under paragraph 46, the NDEA is mandated to investigate drug related matters under the Drug Control Act of 2003 and its subsequent Amendments. The Act makes provision for and provides guidance on the activities on the NDEA, having due regard to the fundamental rights and liberties of persons.

17. It is with disappointment that the Special Rapporteur chooses to make such allegations as contained in paragraph 46 given that, during the period of visit, The Gambian officials provided a copy of the Drug Control Act to the Special Rapporteur which clearly outlines the mandate and powers of the NDEA.

VI. Impunity for extrajudicial executions and enforced disappearances

18. Law Enforcement Officers are continuously engaged in training and sensitization on human rights especially Officers of the Police Human Rights Unit.

19. Paragraph 41 of the Reports states "...reports of the police regularly extending the 72 hour limit for detention without charge and seldom conducting an arrest pursuant to a warrant". This is unsubstantiated and unverified. We task the Special Rapporteur to provide instances of the allegations made in the said paragraph.

20. Paragraph 44 of the Report states "...serious concern about the broad and unchecked power as afforded to such special units under the umbrella of the Gambia Police Force". This is an inaccurate representation of facts. The special unit under the Gambia Police force comprises of all Security Units which are meant to compliment the efforts of Police and Immigration.

21. We also take issue with the allegations made in Paragraph 48. There is an on-site medical facility at the Prisons. Autopsy investigations are performed on all deaths that occur within the vicinity of Mille II Central Prisons. There has not been any report of deaths due to the use of excessive force or mistreatment. All death cases are accompanied with comprehensive medical certificates on the causes of death.

22. Paragraph 55 does not fully reflect the situation on the ground. The Gambia does not treat cases involving law enforcement officers any different. Law enforcement officers have faced the full force of the law when charges are levied against them. For example in the case of the State v. Edrissa Jarju and Edrissa Jaiteh, both NDEA officers accused of murder, were tried on a murder charge before the High Court of The Gambia. Even though they were acquitted, the State filed a motion for appeal against their conviction at the Court

of Appeal. It is therefore unfair and inaccurate to conclude that there is impunity for crimes committed by law enforcement officers. In the case of Cherno Alieu Suwareh, the accused were arrested, charged and prosecuted. Justice took its course when they were acquitted and discharged following a full blown trial.

23. In Paragraph 56, the Special Rapporteur has not checked the authenticity or source of the photos to enable him to arrive at the conclusion that they were indeed photos of the dead coup plotters.

24. In Paragraph 58, the decision to deny the Special Rapporteur access to the security wing of the Mile II Prisons has no relevance or bearing on the willingness of the Government of The Gambia to receive international assistance to investigate the cases of Mr. Manneh and Mr. Hydara.

25. Paragraph 59 to 63 are based on mere speculations. There is no proof to support the allegations made therein.

VII. Accountability for human rights violations

26. In Paragraph 71, we note that all cases involving law enforcement officers where they were alleged to have perpetrated a killing have been investigated and prosecuted. We cannot therefore urge our Courts to convict based on insufficient evidence in an attempt to appease the international community. Where the state has not been satisfied with the decision of the court, it has resorted to appealing the decision.(See paragraph 15 above)

27. We reiterate the independence of The Gambian Judiciary, contrary to the allegation of lack of independence made in paragraphs 72. (See paragraph 6 above)

VII. Conclusion

28. **In light of the above responses, we are confident that the Report will be reviewed and amended accordingly.**